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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,214	09/16/2004	Daljit S. Ohbi	OHB13001/REF	5192
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BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314			EXAMINER O HERN, BRENT T	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/507,214

Applicant(s)

OHBI ET AL.

Examiner

Brent T. O'Hern

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claims***

1. Claims 1-29 are pending.

### **WITHDRAWN REJECTIONS**

2. The 35 U.S.C. 112, second paragraph rejection of claims 2-3 and 23 of record in the Office Action mailed 27 April 2007, page 2, paragraph 2, have been withdrawn due to Applicant's amendments in the Paper filed 29 October 2007.
3. The 35 U.S.C. 102(b) rejection of claim 9 as being anticipated by Kaszas et al. (US 5,276,094) of record in the Office Action mailed 27 April 2007, page 3, paragraph 3, has been withdrawn due to Applicant's amendments in the Paper filed 29 October 2007.
4. The 35 U.S.C. 103(a) rejection of claim 9 as being as being unpatentable over Klokke-Bethke et al. (US 5,370,862) in view of Kaszas et al. (US 5,276,094) of record in the Office Action mailed 27 April 2007, page 10, paragraph 7, has been withdrawn due to Applicant's amendments in the Paper filed 29 October 2007.

### **REPEATED REJECTIONS**

5. The 35 U.S.C. 112, second paragraph rejection of claims 1, 5, 28 and 29 are repeated for the reasons of record in the Office Action mailed 27 April 2007, page 2, paragraph 2.
6. The 35 U.S.C. 102(b) rejections of claims 1-5, 9, 12-22 and 28 (except claim 9) as being anticipated by Kaszas et al. (US 5,276,094) are repeated for the reasons of record in the Office Action mailed 27 April 2007, page 3, paragraph 3.

7. The 35 U.S.C. 103(a) rejections of claims 6-7 and 29 as being unpatentable over Kaszas et al. (US 5,276,094) in view of Simons et al. (US 3,443,006) are repeated for the reasons of record in the Office Action mailed 27 April 2007, page 7, paragraph 4.
8. The 35 U.S.C. 103(a) rejection of claim 10 as being unpatentable over Kaszas et al. (US 5,276,094) in view of Stevenson (US 4,695,609) is repeated for the reasons of record in the Office Action mailed 27 April 2007, page 8, paragraph 5.
9. The 35 U.S.C. 103(a) rejection of claim 11 as being unpatentable over Kaszas et al. (US 5,276,094) in view of Blok et al. (US 6,300,421) is repeated for the reasons of record in the Office Action mailed 27 April 2007, page 9, paragraph 6.
10. The 35 U.S.C. 103(a) rejection of claims 1, 8, and 23-27 as being unpatentable over Klokke-Bethke et al. (US 5,370,862) in view of Kaszas et al. (US 5,276,094) is repeated for the reasons of record in the Office Action mailed 27 April 2007, page 10, paragraph 7.

#### **NEW REJECTIONS**

##### ***Claim Rejections - 35 USC § 112***

11. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "wherein the substituted group in said polysulphide compound is an isopropyl group from an isopropyl substituted dithiocarbonic acid" in claim 9, lines 1-3 is vague and indefinite since it is unclear whether the isopropyl group is a species of an isopropyl substituted dithiocarbonic acid, is a product of the process comprising isopropyl substituted dithiocarbonic acid or something else.

Clarification and/or correction is required.

***Claim Rejections - 35 USC § 103***

**12.** Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaszas et al. (US 5,276,094) in view of Stevenson (US 4,695,609).

Kaszas ('094) teaches the seal discussed above, however, fails to expressly disclose wherein the substituted group in said polysulphide compound is an isopropyl group.

However, Stevenson ('609) teaches wherein the substituted group in the polysulphide compound is an isopropyl group (*See col. 4, ll. 11-14.*) for the purpose of providing efficient processing without the use of amines or other accelerator materials (*See col. 4, ll. 41-54.*).

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use the polysulphide compound wherein the substituted group in the polysulphide compound is an isopropyl group as taught by Stevenson ('609) in Kaszas ('094) in order to provide efficient processing without the use of amines or other accelerator materials.

**13.** Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klokkers-Bethke et al. (US 5,370,862) in view of Kaszas et al. (US 5,276,094).

Klokkers-Bethke ('862) teaches the seal discussed above, however, fails to expressly disclose wherein the substituted group in said polysulphide compound is an isopropyl group.

However, Stevenson ('609) teaches wherein the substituted group in the polysulphide compound is an isopropyl group (*See col. 4, ll. 11-14.*) for the purpose of

providing efficient processing without the use of amines or other accelerator materials  
(See col. 4, ll. 41-54.).

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use the polysulphide compound wherein the substituted group in the polysulphide compound is an isopropyl group as taught by Stevenson ('609) in Klokke-Bethke ('862) in order to provide efficient processing without the use of amines or other accelerator materials.

#### **ANSWERS TO APPLICANT'S ARGUMENTS**

**14.** In response to Applicant's arguments (*p. 10, para. 2 to p. 12, para. 4 of Applicant's Paper filed 29 October 2007*) that the method of producing the accelerator imparts further structural limitations than already discussed, it is firstly noted that Applicant's invention is not directed to an accelerator but a rather seal with a composition that was formed by a reaction mixture comprising an accelerator. Thus, Applicant is attempting to exclude prior art teachings by unknown unclaimed limitations from process limitations that have at least three degrees of separation from the claimed product. Furthermore, Kaszas ('094) clearly teaches the claimed composition and accelerator (*See col. 8, ll. 4-22.*).

**15.** In response to Applicant's arguments (*p. 10, para. 3 to p. 12, para. 4 of Applicant's Paper filed 29 October 2007*) that Applicant's "intent to use" language in the preamble present further structural limitations, it is noted that Applicant's invention is directed to a product and limited to the claimed structural limitations of Applicant's product, not an intent to use the product or a pharmaceutical dispensing device. If Applicant wishes to claim a pharmaceutical dispensing device then Applicant may want to consider claiming a pharmaceutical dispensing device, however, in the meantime Applicant can not attempt

to claim a pharmaceutical dispensing device without claiming one while at the same time attempting to exclude all prior art that does not expressly state their devices are pharmaceutical dispensing devices. Thus, Kaszas ('094) clearly teaches all of the claimed structural limitations as discussed above.

16. In response to Applicant's arguments (*p. 13, paras. 1-2 of Applicant's Paper filed 29 October 2007*) that there is no motivation to combine Stevenson ('609) with Kaszas ('094), it is noted that Applicant appears to have overlooked the motivation as cited on p. 9 of the Office Action mailed 27 April 2007.

17. In response to Applicant's arguments (*p. 13, paras. 3-4 of Applicant's Paper filed 29 October 2007*) that Applicant's claims are "free of peroxide curing agents", it is noted that Applicant's claims do not have said negative limitations.

18. In response to Applicant's arguments (*p. 13, para. 5 to p. 14, para. 2 of Applicant's Paper filed 29 October 2007*) that Kaszas ('094) and Klokke-Bethke ('862), which both teach aerosol dispensers are from unrelated technical fields, it is noted that a person having ordinary skill in the art at the time Applicant's invention was made would clearly appreciate aerosol dispensers as being a related technical field.

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

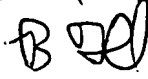
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571) 272-0496. The examiner can normally be reached on Monday -Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-0996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-

9199 (IN USA OR CANADA) or 571-272-1000.

  
Brent T O'Hern  
Examiner  
Art Unit 1794  
November 12, 2007

  
NASSER AHMAD  
PRIMARY EXAMINER 11/21/07